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09/919,278	07/31/2001	Herm Snyder	0068.00	4703
21968	7590	09/05/2007		
NEKTAR THERAPEUTICS 150 INDUSTRIAL ROAD SAN CARLOS, CA 94070			EXAMINER KISHORE, GOLLAMUDI S	
			ART UNIT 1615	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/919,278  
Filing Date: July 31, 2001  
Appellant(s): SNYDER ET AL.

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John-Paul F. Cherry  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 6-13-07 appealing from the Office action  
mailed 11-13-06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4,871,489	Ketcham	10-1989
5,952,008	Backstrom	9-1999

4,590,206

Forrester

5-1986

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 19-32 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Ketcham et al. (U.S. Patent No. 4,871,489) in view of Backstrom et al. (U.S. Patent No. 5,952,008), Forrester et al. (U.S. Patent No. 4,590,206) as set forth in office action dated 1-4-06.

### **(10) Response to Argument**

Appellant's arguments have been fully considered, but are not found to be persuasive. Appellant argues that Ketcham discloses an apparatus for producing liquid droplets of solutions of metal oxides or metal oxide precursors and that in Ketcham the vibratory element causes the orifice plate to vibrate and is located away from the flow of the liquid feed. These arguments are not persuasive. First of all, Ketcham on col. 2, line 66 teaches the preparation of solid particles besides the liquid droplets using the apparatus. Secondly, instant claims recites, 'forcing said liquid stock into a manifold defined between a vibratable element and the plate and forcing the feed stock through the plate'. A careful examination of Figure 1 in Ketcham shows that the liquid feed is forced through the plate and the vibrating element. Instant claims as recited do not require the presence of the vibratable element to be inside. The reference thus, meets the requirements of instant claims.

In response to this argument, appellant argues that appellant's claims recite forcing the liquid feedstock into a manifold defined between a vibratable element and a

plate and that Ketcham does not disclose such a manifold defined between a vibratable element and a plate. According to appellant, "as can be seen in Figure 1, the liquid feed is forced into the chamber 14 which is defined between the base (18) and the orifice plate (13) and then forced through the orifice plate (13). Further according to appellant, as disclosed in Figure 1 and in column 3, lines 64-67, the vibratory element (15) of *Ketcham* does not alone, or coupled with the plate or base, define a manifold into which the liquid feed is forced. This argument is not persuasive. First of all, a careful review of instant specification indicates no definition of the 'manifold' argued by appellant. In the absence of such, the examiner maintains that the apparatus disclosed by Ketcham where the liquid feed is forced through the vibratable element and the plate comprising the holes just as in instant claim 19. Appellant argues that Ketcham discloses forming particles from solutions or suspensions of oxygen-containing materials that are decomposable to a refractory metal oxide and these metal oxides have very different physical and chemical characteristics from the pharmaceutical particles disclosed by Backstrom and Forrester. The examiner points out that the apparatus described by Ketcham is for producing particles, the method would be the same irrespective of whether the particles produced are for pharmaceutical purpose or otherwise; there is nothing in the reference to indicate that the apparatus cannot be used for pharmaceutical compounds. Furthermore, the references of Backstrom and Forrester show the production of particles of proteins using atomizers and if Ketcham's apparatus can be used for the production of particles of oxygen containing materials which are ***decomposable***, one of ordinary skill in the art would be motivated to use for the

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production of particles of albuterol sulfate, cromolyn sodium and others claimed in instant claims with a reasonable expectation of success.

Appellant while acknowledging that Backstrom teaches that the active compounds should consists of particles having a diameter less than approximately 10 micrometers, argue that the particles are produced by micronization. This argument is not persuasive since Forrester teaches that pharmaceutical compounds such as enzymes and cromoglycate can be atomized.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,



Gollamudi S. Kishore, Ph.D

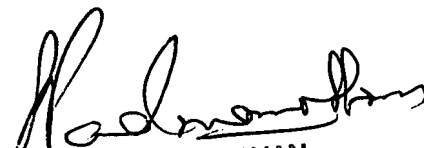
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